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Attorneys for Defendant Rhino Freight Line, Inc.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN JOAQUIN

TAFIROLE SAO, an individual,

Plaintiff,

vs.

**RHINO FREIGHT LINE, INC., a
corporation; and DOES 1-100, inclusive,**

Defendants.

Case No.: STK-CV-UOE-2020-0010231

**STIPULATION OF SETTLEMENT UNDER
PRIVATE ATTORNEYS GENERAL ACT OF
2004; [PROPOSED] ORDER**

The Parties hereto, Plaintiff Tafirole Sao ("Plaintiff") as a proxy for the Labor and Workforce Development Agency ("LWDA"), and Defendant Rhino Freight Line, Inc. ("Defendant"), by and through their respective counsel of record, hereby stipulate and agree as

1 follows:

2 1. WHEREAS, on October 2, 2020, counsel for Plaintiff sent a letter to the LWDA and
3 Defendant alleging violations of the Labor Code alleged to have occurred during Plaintiff's
4 employment with Defendant, on behalf of Plaintiff and other purportedly aggrieved employees
5 ("LWDA Letter").

6 2. WHEREAS, on December 7, 2020, Plaintiff filed this action alleging both
7 individual causes of action under the Labor Code, and also a claim under the Private Attorneys
8 General Act ("PAGA", Lab. Code, § 2698, *et seq.*).

9 3. WHEREAS, subsequent to the filing of the Complaint, the Parties engaged in
10 formal discovery through which Defendant provided information regarding the number of
11 California employees believed to have been affected by the alleged violations during the relevant
12 time period. The total number of aggrieved employees potentially affected by the PAGA Claims as
13 of the date of this order is believed to be twenty-four (24).

14 4. WHEREAS, Defendant denies all of Plaintiff's allegations, both on factual and legal
15 bases.

16 5. WHEREAS, the Parties engaged in settlement negotiations primarily through their
17 respective attorneys: John P. Briscoe, a shareholder of Mayall Hurley P.C. and a member of that
18 firm's employment litigation group; and Cassandra M. Ferrannini of Downey Brand LLP, both
19 experienced litigators with knowledge of employment law and the PAGA.

20 6. WHEREAS, the Parties have reached agreement on the terms of settlement
21 regarding the PAGA claims, including Plaintiff's individual PAGA claims. Plaintiff's individual
22 non-PAGA claims shall be resolved by way of a separate, confidential settlement agreement.
23 However, approval by the San Joaquin County Superior Court of this Stipulation is a condition
24 precedent to the Parties' agreement to settle Plaintiff's individual claims against Defendant.

25 7. WHEREAS, Labor Code section 2699(l) requires that the court review and approve
26 any proposed settlement agreement pursuant to PAGA.

27 8. WHEREAS, Plaintiff and Plaintiff's counsel concluded—after taking into account

1 the sharply disputed factual and legal issues involved in the Action, the risks attending further
2 prosecution, the discovery and investigation conducted to date, and the substantial benefits
3 received and to be received pursuant to the compromise and settlement of the Action, the nature of
4 the claimed violations and the wide discretion of the Court to reduce civil penalties imposed—that
5 settlement on the terms herein set forth is in the best interest of all interested parties, including the
6 Labor and Workforce Development Agency (the “LWDA”), and that the settlement adequately
7 serves the deterrent purposes of the PAGA.

8 9. WHEREAS, Plaintiff and Plaintiff’s counsel have balanced their evaluation of the
9 validity and strength of the asserted claims against the problems of proof and the legal standards
10 governing the claims alleged. Plaintiff’s counsel believes the evidence demonstrates approximately
11 350 violations of Labor Code section 226, subdivision (a); 350 violations of Labor Code section
12 246; 350 violations of Labor Code sections 1182.12 and 1197; 350 violations of Labor Code
13 section 226.2; 134 violations of Labor Code section 204; and 12 violations of Labor Code sections
14 201 and 202. Applying the appropriate civil penalties as provided by the Labor Code, Plaintiff’s
15 counsel estimates the maximum recoverable civil penalties under the PAGA to be \$189,600. A trial
16 court, per the PAGA, has discretion to reduce the assessed amount of civil penalties if to do
17 otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory. (See
18 Lab. Code, § 2699, subd. (e)(2).) The settlement reached represents a recovery that is
19 approximately one-sixth of the maximum recoverable civil penalties. Based on this evaluation,
20 Plaintiff’s counsel believes that the settlement reached satisfies the public policies of PAGA to
21 punish past violations and deter future violations of the Labor Code.

22 10. WHEREAS, similarly, Defendant and Defendant’s counsel concluded there were
23 benefits associated with settling. Although Defendant denies the various allegations and
24 challenges the validity of each of the causes of action in the Action, Defendant took into account
25 the sharply disputed factual and legal issues involved in the Action, the risk attending further
26 defense, the expense, time, and burden of protracted litigation and potential appeal following a
27 judgment, and the desire to put the controversy to rest. Based on these factors, Defendant and

Defendant's counsel agreed to this settlement without any admission of fault or liability. Nothing in this Agreement, nor any action taken in implementation thereof, nor any statements, discussions or communications, nor any materials prepared, exchanged, issued, or used during the course of the negotiations leading to this Agreement, is intended by the Parties to constitute, nor will any of the foregoing constitute, be introduced, be used or be admissible in any way in this case or any judicial, arbitral, administrative, investigative, or other forum or proceeding as evidence of any violation of any federal, state, or local law, statute, ordinance, regulation, rule, or executive order, or any obligation or duty at law or in equity, against Defendant or any other Released Party (as defined in paragraph 13, *infra*).

11. WHEREAS, the Parties hereby agree to settle the PAGA claims at issue in the Action ("the PAGA Settlement") for a total payment of **\$30,000.00** and dismiss with prejudice the Sixth Cause of Action under the PAGA.

12. WHEREAS, the persons covered by the PAGA Settlement will be Plaintiff and all other persons who were employed by Defendant in California as nonexempt truck drivers who were paid at least in part by the mile at any time from October 3, 2019 to the date of approval of this PAGA Settlement. The time period covered by the PAGA Settlement will be from October 3, 2019 through the date of this order ("the PAGA Timeframe"). The Released Parties include Defendant, its parents, predecessors, successors, related companies, subsidiaries, affiliates, partners, officers, directors, managers, servants, agents, employees, former employees, future employees, future entities, trusts, employment agencies and professional employer organizations, and their employees, officers, agents, representatives, attorneys, past or present, insurers, stockholders, fiduciaries, and other service providers, and their successors and assigns, and all persons acting under, by, through, or in concert with any of them (hereinafter collectively referred to as the "Released Parties").

13. Upon the Effective Date (the date the Court signs this stipulated order), the LWDA and each of the Other Aggrieved Employees, including Plaintiff, hereby voluntarily and knowingly release and forever discharge any and all claims against the Released Parties that could have been

premiered or predicated on any claims, causes of action, or legal theories of relief described or pleaded in the operative complaint filed in this action and the written notice of any such claims submitted to the LWDA by Plaintiff under PAGA, specifically for violations of Labor Code sections 201, 202, 204, 221, 226, 226.2, 226.7, 512, 1182.12, and 1197, arising from October 3, 2019 through the date of this order ("PAGA Released Claims").

14. Neither the distribution of Individual Settlement Payment checks to, nor the use or enjoyment of any Individual Settlement Payment checks by Other Aggrieved Employees shall constitute consideration offered or exchanged for the release of any Other Aggrieved Employees or private rights of action against any person.

15. This Stipulation of Settlement shall not operate as a waiver of any of Plaintiff's individual (i.e., non-PAGA) claims, which are to be resolved by a separate agreement. However, approval by the San Joaquin County Superior Court of this Stipulation is a condition precedent to the Parties' agreement to settle Plaintiff's individual claims against Defendant.

16. The PAGA Settlement shall be administered by Phoenix Settlement Administrators ("Administrator").

17. Administrator and verified that, as a condition of appointment, it agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of the Administration Expenses Payment out of the Gross PAGA Settlement Sum. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.

18. "Administration Expenses Payment" means the amount the Administrator will be paid from the Gross PAGA Settlement Sum to be reimbursed for its reasonable fees and expenses.

19. WHEREAS, the sum of \$30,000 (the "Gross PAGA Settlement Sum") shall be allocated as follows:

- a. \$10,000, representing approximately 33 1/3% of the Gross PAGA Settlement Sum as attorneys' fees incurred for prosecution of the PAGA Claim; and

- b. \$6,186.04 for costs of suit.
- c. \$1,950 for Administration Expenses Payment to Administrator.

The Net PAGA Settlement Amount of \$11,863.96 will be further allocated as follows:

- e. \$2,965.99, or 25 percent (25%) of the Net PAGA Settlement Sum will be distributed by Administrator to Plaintiff and the Other Aggrieved Employees who worked during the PAGA Timeframe. Each employee will receive a proportional share of the net PAGA Settlement Sum based on the number of pay periods he/she was employed during the PAGA Timeframe. Any such employees still employed with or on behalf of Defendant will receive the appropriate credit apart from their regular pay. Administrator will send each Other Aggrieved Employee their portion of the settlement by mail to the last known address. Settlement checks issued to the Other Aggrieved Employees pursuant to this Agreement shall expire 180 days from the date they are issued. Any unclaimed funds after the 180 days shall be remitted to the LWDA.
- f. \$8,897.97 or 75 percent (75%) of the Net PAGA Settlement Sum shall be paid to the LWDA in accordance with Section 2699(i) of the California Labor Code.

20. In no event shall Defendant pay more than \$30,000.00 pursuant to this Stipulation of Settlement.

21. WHEREAS, on the condition that the Court approves this Stipulation and enters the attached Order: the PAGA Settlement Sum will be paid as follows:

- a. Defendant shall fully fund the Gross Settlement Amount by transmitting the funds to the Administrator no later than twenty-eight (28) days after the Effective Date.
- b. Within ten (10) calendar days after receiving the Gross Settlement Amount, Administrator shall (1) pay to Mayall Hurley P.C. attorney's fees in the amount of \$10,000 and costs in the amount of \$6,186.04; (2) pay \$8,897.97 to the LWDA; (3) retain the Administrator Expenses Payment not to exceed \$1,950; and (4) pay the Individual Settlement Payments to the Other Aggrieved Employees.
- c. With regard to the Other Aggrieved Employees with the exception of Plaintiff, their Individual Settlement Payments shall be sent to each Other Aggrieved Employee by U.S. First Class mail to the Other Aggrieved Employee's last known address. A letter explaining this Settlement Agreement will be included in the mailing of each Other Aggrieved Employee's check. Plaintiff's payment will be sent with the other consideration provided for resolution of his individual claims. It will be conclusively presumed that any Other Aggrieved Employee's

check was received if the payment check has not been returned within thirty (30) days of the original mailing of the payment check.

d. Settlement checks shall remain valid and negotiable for one hundred twenty (120) calendar days from the date of their issuance. If there are uncashed checks following this period, Administrator will ensure that uncashed funds shall be forwarded to the LWDA in the name of the Other Aggrieved Employee who did not cash his or her Individual Settlement Payment, if practicable.

e. The settlement payments set forth above will be reported on IRS Form 1099s. The Parties acknowledge and agree that all settlement payments set forth under this Agreement are attributable as penalties. None are attributable as wages. Accordingly, the parties acknowledge and agree that Defendant is not responsible for any employer-side taxes in connection with any PAGA settlement payments under this Agreement. Plaintiff, Mayall Hurley P.C., and the Other Aggrieved Employees shall be solely responsible for the reporting and payment of their share of any federal, state and/or municipal income or other taxes on payments made pursuant to this Agreement, and shall hold Defendant and Defendant's counsel free and harmless from any claims resulting from treatment of such payments as non-taxable, including the treatment of such payments as not subject to withholding or deduction for payroll and employment taxes. No party has made any representation to any of the other Parties as to the taxability of any payments pursuant to this agreement, including the payments to Plaintiff and the Other Aggrieved Employees, the payments to Plaintiff's counsel, or otherwise as to the tax implications of any provision of this Agreement.

22. The Parties jointly request that the Court approve the penalties sought as part of the PAGA Settlement and approve the dismissal of the PAGA claims in the Complaint attendant therewith.

23. This Stipulation is made for the sole purpose of settling this Action. This Stipulation and the settlement it evidences are made in compromise of disputed claims. Because this action was pleaded as a PAGA action, this Stipulation must receive approval by the Court. Accordingly, the Parties enter into this Stipulation and associated settlement on a conditional basis. If the Court does not enter an order granting approval of this Stipulation, this Stipulation shall be deemed null and void; it shall be of no force or effect whatsoever; it shall not be referred to or utilized for any purpose whatsoever; and the negotiation, terms and entry of the Stipulation shall remain subject to the provisions of California Evidence Code sections 1119 and 1152, Federal Rule

1 of Evidence 408, and any other analogous rules of evidence that may be applicable. If the Court
2 does enter an order granting approval of this Stipulation, the Parties shall file a Request for
3 Dismissal which includes a dismissal of the PAGA claims in the Complaint.

4 24. The Parties and their counsel agree that they will not issue any press releases,
5 initiate any contact with the press, respond to any press inquiry or have any communication with
6 the press about the fact, amount or terms of this Stipulation. In addition, the Parties and their
7 counsel agree that they will not engage in any advertising or distribute any marketing materials
8 relating to this Stipulation or this action in any manner that identifies Defendant, including but not
9 limited to any postings on any websites maintained by Plaintiff's counsel. Neither Plaintiff nor
10 Plaintiff's Counsel will discuss the terms or the fact of this Agreement with third parties other than
11 (1) their immediate family members, or (2) their respective accountants or lawyers as necessary for
12 tax purposes. Plaintiff and Plaintiff's Counsel agree not to publish any of the terms or conditions
13 of this Stipulation in any manner that identifies Defendant.

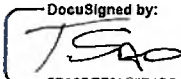
14 25. Plaintiff's attorney has calculated the attorneys' fees included in paragraph 16. The
15 Parties agree that if the Court approves an amount of attorneys' fees less than the amount set forth
16 in Paragraph 16, the unapproved portion shall revert to the Net PAGA Settlement Amount to be
17 distributed between the Plaintiff, the Other Aggrieved Employees and the LWDA in the same
18 percentages as set forth in Paragraph 16.

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20 **IT IS SO STIPULATED.**

21 **PLAINTIFF AND PLAINTIFF'S COUNSEL**

22
23 DATED: 10/11/2022 _____

DocuSigned by:

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Plaintiff Tafilele Sao

1 DATED: 10/11/2022

MAYALL HURLEY P.C.

2
3 By: 
4 John P. Briscoe
5 Attorneys for Plaintiff

6 **DEFENDANT AND DEFENDANT'S COUNSEL**

7 Rhino Freight Line, Inc.

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10 DATED: _____

By: _____
Karmjit Singh, CEO

11
12 DATED: _____

DOWNEY BRAND LLP

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14
15 By: _____
16 Cassandra M. Ferrannini
17 Cameron P. Haynes
18 Attorneys for Defendant

19 **ORDER**

20 Upon review of the foregoing stipulation entered into by and between the parties in the
21 above-referenced action, and good cause appearing therefor,

22 **IT IS HEREBY ORDERED** that the foregoing stipulation is hereby approved and the
23 Court approves the Parties' PAGA Settlement pursuant to Labor Code § 2699(l). The parties are
24 ordered to perform their respective duties as stipulated thereto.

25
26 DATED: _____
27 Judge of the Superior Court

1 DATED: _____

MAYALL HURLEY P.C.

2
3
4 By: _____
John P. Briscoe
Attorneys for Plaintiff

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6 **DEFENDANT AND DEFENDANT'S COUNSEL**

7 Rhino Freight Line, Inc.

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9
10 DATED: 09/30/2022

By: Karmjit Singh
Karmjit Singh, CEO

11
12 DATED: 10/11/22

DOWNEY BRAND LLP

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14
15 By: 
Cassandra M. Ferrannini
Cameron P. Haynes
Attorneys for Defendant

16
17 **ORDER**

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24
25
26 DATED: _____
Judge of the Superior Court